

REMARKS

Claims 1-2, 4, 8-9, 11-14 and 21 were pending in this application. The preambles of claims 1 and 21 have been amended to limit the invention for use with a portable propane tank, which is a subset of a pressurized cylinder. Claim 8 has been amended for antecedent basis purposes. Additionally, claims 1 and 21 have been amended to positively recite the interaction of the portable propane tank and the opening formed by the flaps. Support for this amendment is found in Paragraph [0028] and in FIG. 8. Withdrawn claims 3, 5-6, 10 and 22 have now been cancelled. Claim 4 has been cancelled. No new claims have been added. Accordingly, claims 1-2, 8-9, 11-14 and 21 are still pending in this application.

35 U.S.C. §103 Rejections

Claims 1-2, 4, 8-9, 11-14 and 21 continue to stand rejected under 35 U.S.C. §103(a) for obviousness based upon United States Patent No. 4,905,855 to Troiano et al. (hereinafter “Troiano”) in view of United States Patent No. 1,873,690 to Ward, and further in view of United States Patent No. 6,929,142 to Gilbert et al. (hereinafter “Gilbert”) and, where applicable, a combination of one or more of United States Patent No. 5,263,727 to Libit et al. and United States Patent No. 4,767,139 to Hansing.

Specifically, the Examiner states that Gilbert “shows a flap structure with a pair of side flaps pivotally connected to a closed position where the center of the container is only partially covered.” The Examiner maintains that it would have been obvious to one having ordinary skill in the art to incorporate the pair of side flaps, as taught by Gilbert, to the inventions taught by Troiano and Ward. Applicant has previously pointed out that Gilbert

does not disclose analogous art and is, therefore, improper prior art for purposes of the instant rejection. Gilbert has nothing to do with securing anything placed within a container – Gilbert merely discloses an access latch for use with a storage tank sized to accommodate an inspection vehicle.

In response to Applicant's previous arguments, the Examiner asserted that although Gilbert may not be analogous art, if a prior art reference is reasonably pertinent to the particular problem with which the inventor was concerned, then such a prior art reference may still be relied upon as a basis for rejection (*In re Oetiker*, 997 F.2d 1443 (Fed. Cir. 1992)). The Examiner then concluded that the teachings of Gilbert (i.e., hinged flap structure) are pertinent to solving the problem of providing a structure that covers the top of a container, while allowing for a partial opening in the top of the container.

Applicant respectfully disagrees with the Examiner on the basis that that the Examiner has not further inquired into the interpretation of the "reasonably pertinent" aspect of the test offered in *Oetiker*. Specifically, it has been held that a "reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, *logically would have commended itself to an inventor's attention in considering his problem.*"(emphasis added) (*Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993)). An inventor attempting to find a suitable flap for use with a carrier for securing a portable propane tank would not have looked to the art of access latches for large, fixed storage tanks, as disclosed in Gilbert.

In fact, an inventor would have looked to prior art in which the opening of a hinged flap arrangement of a "container" is suited for receiving therethrough a portion of the

object secured within the “container.” Gilbert does not disclose the requisite teaching, suggestion or motivation for an inventor to use such a hinged flap arrangement with an opening in the context of a carrier for securing a portable propane tank. As already pointed out in Applicant’s Amendment dated February 14, 2006, the opening of the hinged flap arrangement in Gilbert allows an umbilical cord to pass into the storage tank to an inspection vehicle situated therein. In contrast, the present invention utilizes the hinged flap arrangement with an opening to prevent vertical movement of the portable propane tank, while exposing the valve mechanism. Accordingly, hookup and on/off access to the portable propane tank is permitted while the portable propane tank is still secured within the carrier. Therefore, it cannot be reasonably argued that Gilbert logically would have commended itself to an inventor’s attention. Hence, Gilbert is neither analogous nor reasonably pertinent prior art for the basis of forming a rejection of the claimed subject matter.

As further evidence of case law supporting Applicant’s position, the Examiner is urged to examine the factual circumstances and application of law in *Oetiker* and to compare how they relate to the circumstances of the present invention. Specifically, in *Oetiker*, the applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly “hook” which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board of Appeals relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The Court of Appeals for the Federal Circuit held that the reference was not within the field of the applicant’s endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of

fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. *Furthermore, just because both the prior art and the applicant's claimed invention utilized a disengageable catch that is considered to be a common everyday mechanical concept, the Board of Appeals did not explain why such a catch would have made the applicant's invention obvious.* (emphasis added) The Court noted that the Board of Appeals did not address how the cited references would provide a teaching or suggestion that the prior art catch, even if combined with the applicant's clamp, would achieve the applicant's purpose.

Accordingly, (1) Gilbert would not logically have commended itself to an inventor's attention in considering the problem of securing a portable propane tank within the container; and (2) although a flap structure is a common everyday mechanical concept, there is no teaching or suggestion as to why use of the flap structure of Gilbert with the claimed carrier of the present invention would be considered obvious. The most recent Court of Appeals for the Federal Circuit ruling (*Teleflex Inc. v. KSR Int'l. Co.*, 04-1152, Fed. Cir. 2005) regarding the test for obviousness emphasized that the correct standard for obviousness determination requires "*specific findings* showing a teaching, suggestion, or motivation to combine prior art teachings in the particular manner" as set forth in the claims. (emphasis added) There is simply no such teaching, suggestion or motivation, specific or otherwise, in either of the references with respect to combination of the teachings therein.

In view of the aforementioned case law and the application of law in those cases, Applicant believes that the Examiner is clearly wrong as a matter of law in his reliance on Gilbert to reject the pending claims.

Response Under 37 CFR 1.116

Expedited Procedure

Examining Group 3600

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CONCLUSION

Based on the foregoing remarks, reconsideration of the rejections and allowance of pending claims 1-2, 8-9, 11-14 and 21 are respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By Alexander Detschelt

Alexander Detschelt

Registration No. 50,261

Attorney for Applicant

700 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

Telephone: 412-471-8815

Facsimile: 412-471-4094

E-mail: webblaw@webblaw.com